



TTAB Update

July 28, 2017

Gerard F. Rogers
Chief Administrative Trademark Judge
Trademark Trial and Appeal Board

UNITED STATES
PATENT AND TRADEMARK OFFICE



FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through June 2017	Variance
JUDGES and ATTORNEYS				
Administrative Trademark Judges	24	(actuals) 24	24	On target
Interlocutory Attorneys	14.6	14.6	13.6	
FILINGS				
Notices of Appeal	3,121		2,418	+3.3%
Extensions of Time to Oppose	19,055		13,709	-4%
Notices of Opposition	5,881		4,658	+5.6%
Petitions to Cancel	1,848		1,558	+12.4%

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through June 2017	Variance
PRODUCTION-DECISIONS				
Cases Decided on Merits	688		463	-10.3%
Precedential Decisions Issued	35	35-40	23	On target
Contested Motions Decided	1,367	(target)	926	-9.7%
Uncontested Motions Processed	29,949		24,195	+7.7%
CUSTOMER SERVICE DESK				
Number of Calls Answered	8,597		7,491	+16.2%
Number of Service Requests	7,423		6,613	+18.8%
Quality of Call Responses	90.65%		96.41%	+6.4%

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through June 2017	Variance
<p>PENDENCY- Contested Motions</p> <p>(1) Measured from ready-for decision until mailing; average of orders on contested motions, excluding precedents, issued during reporting period</p> <p>(2) Age of <u>single</u> oldest contested motion ready for decision at end of reporting period</p>	<p>8.2 weeks</p> <p>11.4 weeks</p>	<p>(targets)</p> <p>8-9 weeks (avg.)</p> <p>12 weeks or less</p>	<p>7.7 weeks</p> <p>21.1 weeks</p>	<p>Better than target</p> <p>Above target</p>
<p>INVENTORY—Contested Motions Ready for Decision</p> <p>The number of cases with contested motions in which briefing was completed, becoming ready for decision, as of the end of the reporting period</p>	<p>117</p>	<p>Cases with Motions 145-175 (target)</p>	<p>111</p>	<p>Better than target</p>

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through June 2017	Variance
PENDENCY- Final Decisions (Cancellations, Oppositions, Ex Parte Appeals) Measured from ready for decision date until mailing for final decisions, excluding precedents, in appeals and trial cases during reporting period	9.2 weeks	10-12 weeks (target)	7.7 weeks	Better than target
INVENTORY—Cases Ready for Final Decision The number of pending appeals and trial cases in which briefing was completed, or in which briefing and arguments were completed, thus becoming ready for decision on the merits, as of the end of the reporting period	Ex Parte Appeals 56 Oppositions 22 Cancellations 5	Total Case Inventory 130-160 (target)	Ex Parte Appeals 67 Oppositions 29 Cancellations 20	116 cases (Better than target)

FY 2017 TTAB Performance Measures	FY 2016 EOY Results	FY 2017 Actual, Target or Projected	Through June 2017	Variance
<p>TOTAL PENDENCY Average total pendency, commencement to completion, excluding precedents</p> <p>Appeals (528 decided FY16; 352 in FY17)</p> <p>Trial Cases (160 decided FY16; 111 in FY17)</p> <p>ACR Trial Cases (23 decided FY16; 13 issued in FY17 and 4 assigned and in process)</p>				
	39.7 weeks		38.5 weeks	-3%
	154.3 weeks		158.9 weeks	+3%
	98.4 weeks		101.2 weeks	+2.8%

A scenic view of a university campus. In the foreground, a wooden bench with a metal frame sits on a lush green lawn. A paved path winds through the grass, leading towards several large, multi-story brick buildings with many windows. The sky is bright blue with scattered white clouds. The overall atmosphere is peaceful and academic.

TTAB ESTTA Changes

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IT Changes - January

- Expanded party email address fields
- More automated processing of extensions of time to oppose, notices of appeal, and notice of opposition when email for applicant on record

IT Changes - June

- Automatic institution of petitions to cancel where registrant has an “authorized” owner email address in TRAM (assuming no domestic representative of record).
- Current proceeding schedule will be available to TTAB internal users to view and update.

IT Changes - June

- When filing motion for summary judgment via ESTTA, filer will be prompted to answer questions to assess timeliness.
- When seeking review of Board decision in trial case via ESTTA, filer will be prompted to choose between Request for Recon or Appeal (and between Fed. Cir. or Dist. Ct.).

IT Changes - June

- New proceeding schedule deployed in TTABIS for internal TTAB use.
- Will help improve the consent motion filing process, determinations of timeliness for various motions.
- Ultimate goal is to make current schedule available in TTABVUE.



Future TTAB Rulemaking?

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New Cancellation Proceeding?

- May establish a streamlined version of cancellation proceeding for handling abandonment and nonuse claims
- Goal to improve accuracy of the use-based register; responsive to stakeholder requests for option to clear deadwood

New Cancellation Proceeding?

- Request for Comments published May 16
- <https://www.federalregister.gov>
- 82 FR 22517
- Comments due August 14, 2017
- Email to: TTABFRNotices@uspto.gov
- Comments posted at www.uspto.gov
- Stakeholder Roundtable September 25



New Cancellation Proceeding?

- Rooted in existing law; no statutory changes needed
- Limited to assertion of two claims:
 - abandonment (nonuse + no intent to resume) and/or
 - no use for all/some goods/services prior to 1(a) filing date, or AAU filing date, or SOU filing date

Pleading with Proof

- Petition must allege facts with particularity re: standing & ground and be supported by evidence (e.g., declaration regarding unsuccessful search for use of mark)
- Respondent answer due in 40 days; defenses limited; with proof of use or excusable nonuse, responsive to petition

Reply? Withdraw? Convert?

- Petitioner has 40 days to elect:
 - Reply with rebuttal evidence, then 90 days to TTAB decision;
 - Withdraw without prejudice to later filing of petition on other grounds;
 - Convert to full cancellation proceeding with additional pleadings, discovery, trial

Process Provisions

- Respondent, separate from answer, may seek discovery on petitioner standing
- No stay of deadlines for answer, petitioner options to reply, withdraw, convert
- Discovery permitted only if it appears could be outcome determinative; TTAB would set schedule for discovery, motion

Additional Timing Issues

- Respondent default could result in judgment in approximately 70 days
- One extension per party (for answer, reply)
- Suspensions rare, and for court litigation
- Decision on merits could issue in 170 days

Questions and Comments

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Chief Administrative Judge

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